

Message Text

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TAGS: CGEN, CPAS, CASC, CVIS, L, JA. (OWENS, JAMES C. JR.)

SUBJECT: NAVY RULING CONCERNING VALIDITY OF DIVORCES IN JAPAN

REF: STATE 028556, TOKYO 1235

1. THE EMBASSY RELUCTANTLY ADVISED PETTY OFFICER OWENS OF YHNAV JAG OFFICE'S RULING AND OF ITS SUGGESTION THAT HE SOLVE HIS PROBLEM BY REMARRYING MS. ESTRUP. IT WILL INFORM OTHER NAVY PERSONNEL OF THIS DECISION.
2. HOWEVER, THE EMBASSY RESPECTFULLY REQUESTS THAT THIS MATTER BE REVIEWED AT THE HIGHEST LEGAL LEVEL IN THE DEPARTMENTS OF STATE AND DEFENSE. IT IS THE OPINION OF THE EMBASSY'S TWO SENIOR CONSULAR OFFICERS, BOTH LAWYERS, THAT THE NAVY JAG'S RULE IS INCORRECT AS A MATTER OF LAW AND COULD LEAD TO JUSTIFIABLE CHARGES OF VIOLATION OF CIVIL RIGHTS OF SERVICEMEN TO WHOM IT IS APPLIED.
3. IT IS OBSERVED IN THIS CONNECTION THAT THERE IS A FUNDAMENTAL RULE OF LAW THAT A MARRIAGE OR DIVORCE WHICH IS VALID UNDER THE LAW OF THE PLACE WHERE IT IS CELEBRATED OR PERFORMED WILL BE RECOGNIZED AS VALID EVERYWHERE, UNDER PRINCIPLES OF COMITY, UNLESS TO RECOGNIZE IT WOULD CONSTITUTE A CLEAR VIOLATION OF PUBLIC POLICY. NO QUESTION OF A VIOLATION OF AMERICAN PUBLIC POLICY COULD POSSIBLY ARISE FROM THE CIRCUMSTANCES OF MR. OWENS' CASE. HE WAS MARRIED ORIGINALLY, DIVORCED AND SUBSEQUENTLY REMARRIED IN JAPAN ENTIRELY IN ACCORDANCE WITH THE

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CIVIL LAWS OF JAPAN, WHERE PHYSICAL PRESENCE BEFORE

THE COURT, NOT DOMICILE OR RESIDENCE AS THOSE TERMS ARE DEFINED IN THE VARIOUS U.S. STATES, IS ALL THAT IS REQUIRED FOR THE FORUM TO HAVE JURISIDCTION. THE FACT THAT THE U.S. MILITARY TAKES THE VIEW THAT A SERVICEMAN DOES NOT ACQUIRE A "RESIDENCE" IN THE COUNTRY I WHICH HE IS STATIONED HAS NO RELEVANCE TO THE CENTRAL QUESTION AT ISSUE, WHICH IS SIMPLY WHETHER HIS DIVORCE AND SUBSEQUENT REMARRIAGE WERE VALID UNDER JAPANESE LAW, AS THEY CLEARLY WERE. IN THE ABSENCE OF A SHOWING THAT U.S. PUBLIC POLICY, AND NOT SIMPLY MILITARY PRACTICE, WAS VIOLATED THEREBY, IT IS THE OPINION OF THE AFOREMENTIONED CONSULAR OFFICERS THAT MR. OWENS' JAPANESE DIVORCE DECREE OUGHT TO BE PRESUMED PRIMA FACIE TO BE VALID AND SHOULD BE GIVEN FULL FAITH AND CREDIT FOR ALL PURPOSES IN THE ABSENCE OF A DECREE OF A COURT OF COMPETENT JURISDICTION DECLARING IT INVALID. SUPPORT FOR THIS VIEW CAN BE FOUND IN HACKWORTH, DIGEST OF INTERNATIONAL LAW, VOLUME TWO, PAGE 382 ET. SEQ. TO HOLD OTHER-WISE WOULD BE TANTAMOUNT TO DECLARING THAT MR. OWENS' MARRIAGE TO MS. ESTRUP IS A BIGAMOUS ONE NOTWITHSTANDING THE FACT THAT HE COMPLIED CHAPTER AND VERSE WITH THE LAWS OF JAPAN. SUCH ANAMALOUS REASONING MIGHT NOT ONLY BE CONSIDERED BY TY JAPANESE AS AN AFFRONT TO THEM BUT COULD ALSO CAUSE SERIOUS PUBLIC RELATIONS PROBLEMS FOR THE EMBASSY AND FOR TY NAVY. MORE IMPORTANTLY, IT COULD NOT POSSIBLE BE APPLIED BY CONSULAR OFFICERS WHEN DETERMINING THE CITIZENSHIP CLAIMS AND VISA ELIGIBLITY OF THE SPOUSES AND CHILDREN OF NAVY SERVICEMEN WHO HAD REMARRIED ON THE BASIS OF A JAPANESE DIVORCE.

HODGSON

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